

In the Matter Of:

IN RE LTL Management LLC Bankruptcy

JOHN KIM

April 14, 2023



UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

IN RE: Chapter 11

LTL MANAGEMENT LLC, Case No.: 23-12825 (MBK)

Debtor,

_____/

* C O N F I D E N T I A L *

VIDEOTAPED DEPOSITION

OF

JOHN KIM

FRIDAY, APRIL 14, 2023

Reported by:

Bridget Lombardozzi, CSR, RMR, CRR

JOB NO. 2023-893116

Stenographic videotaped deposition of JOHN KIM taken on behalf of the Official Committee of Talc Claimants 1 and others similarly situated, commencing at 2:23 p.m., on Friday, April 14, 2023, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, New York, before Bridget Lombardozzi, Certified Shorthand Reporter, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public of the State of New York, pursuant to notice.

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2 2:23 p.m.

3 April 14, 2023

4 - - -

5 We are on the record.

6 Today's date is April 14th, 2023, and

7 the time on the video is 2:23 p.m.

8 This is Video 1 in the deposition of

9 John Kim in the matter of LTL

10 Management LLC versus those parties

11 listed on Appendix A to the complaint

12 and John Does 1 to 1,000 in the U.S.

13 Bankruptcy Court, District of New

14 Jersey, Adversarial No. 23-01092

15 (MBK) .

16 This deposition is taking

17 place at One Manhattan West, New York,

18 New York. The videographer is Dmitry

19 Zvonkov, the court reporter is Bridget

20 Lombardozzi, both with Lexitas.

21 All appearances will be noted

22 on the stenographic record.

23 Will the reporter please

24 swear in the witness.

25 J O H N K I M, having been

1 duly sworn, was examined and testified
2 as follows:

3 THE REPORTER: Thank you.

4 You may proceed.

5 DIRECT-EXAMINATION

6 BY MR. JONAS:

7 Q. Good afternoon, Mr. Kim. How are you?

8 A. Fine, Mr. Jonas. Good afternoon.

9 Q. Good. I think you know I'm Jeff Jonas
10 from Brown Rudnick representing the Ad Hoc Group
11 of CAE claimants in the LTL second bankruptcy.

12 And I think you know the rules of the
13 road, but I'll just review them briefly. We're
14 here to have you testify as completely and
15 truthfully as possible.

16 A. Right.

17 Q. So if there's any questions that you
18 don't understand or that you don't hear, just let
19 me know and we'll read them back or I'll try and
20 make it more clear.

21 Is that okay?

22 A. Okay.

23 Q. Okay. Is there any reason you're aware
24 of that you can't testify completely and
25 truthfully today?

1 A. Not that I'm aware of, no.

2 Q. Great. Okay. With that, let's get to
3 work.

4 MR. JONAS: Can I have Kim --
5 Deane, can we put up Kim -- why don't
6 we start with 8.

7 And get mine ready so we
8 can --

9 MR. BENSON: Okay.

10 MR. JONAS: You can hand that
11 out.

12 THE REPORTER: So will this
13 be Kim 1 or Kim 8?

14 MR. JONAS: Kim 1.

15 THE REPORTER: Okay.

16 MR. JONAS: I'm sorry.

17 That's just a reference for the --
18 pulling them up.

19 (Whereupon, exhibit is
20 received and marked Kim Deposition
21 Exhibit 1 for identification.)

22 THE REPORTER: Kim-1 for
23 identification.

24 THE WITNESS: Thank you.

25 BY MR. JONAS:

1 Agreement One in our life.

2 A. Mm-hmm.

3 Q. On page 6, I just want to confirm your
4 understanding of some of these words. In
5 subsection C on page 6, where it says "The funding
6 of any amounts to satisfy," and then 1.(i) talks
7 about the "payee's talc-related liabilities
8 established by a judgment of a court of competent
9 jurisdiction or final settlement thereof at any
10 time when there is no proceeding under the
11 bankruptcy code pending with respect to the
12 payee."

13 Do you see that?

14 A. Yeah, I do see that.

15 Q. Okay. And is that your under -- is
16 that -- is it your understanding that what that
17 section means is that funding agreement, the first
18 funding agreement, was available to LTL if there
19 was no pending bankruptcy cases?

20 A. To the extent that this agreement was
21 still in force, I would say yes.

22 Q. Okay. Okay. Okay. Let's take a
23 look -- we're going to mark I guess it will be
24 Kim-4.

25 MR. JONAS: Kim number 3,

1 what is available to LTL under the funding
2 agreement, the -- the new funding agreement, to
3 satisfy talc claims and other obligations?

4 A. That would be whatever -- it would be
5 the -- the Holdco funding arrangements.

6 Q. Okay. So that's -- and you think the
7 value of Holdco is roughly -- again, I know --

8 A. No.

9 Q. I'm not holding you to it. I know you
10 -- is roughly \$30 billion.

11 A. Well, that's the -- that's the current
12 fair market value of the assets of Holdco. What
13 Holdco will be doing in the future, you know, if
14 the -- you know, if -- under this hypothetical, if
15 the, you know -- if bankruptcy gets dismissed,
16 yeah, I don't know that I can answer what that --
17 what that number is going to be.

18 Q. Oh, it might be less than \$30 billion?

19 A. Could be more.

20 Q. Could be more? How could it be more?

21 A. Holdco could -- could increase in value.

22 Q. Oh, okay.

23 And under Funding Agreement One, if it
24 was still in existence and if you were outside of
25 bankruptcy, what value under Funding Agreement One

1 Q. It was actually more than that, wasn't
2 it? It had increased from the time you signed the
3 funding agreement until when the bankruptcy was
4 dismissed. The value of JJCI had increased from
5 \$60-odd-billion to something more than that, is
6 that not right?

7 A. I don't -- I don't know.

8 Q. Okay. But just to put a point on it,
9 the moment in time when the bankruptcy -- when
10 Bankruptcy Number One was dismissed and the --
11 before the two hours or so later that you filed
12 Bankruptcy Number Two, there was at least a moment
13 there where you had -- LTL had the benefit of the
14 first funding agreement, right?

15 MS. BROWN: I --

16 A. No, I disagree.

17 Q. You disagree. And why do you disagree
18 with that?

19 A. Because we had -- we had concluded that
20 there was a material risk that the funding
21 agreement was void or voidable as I stated in my
22 -- my declaration.

23 Q. And who made the determination that the
24 funding agreement was void or voidable?

25 A. At the end of the day, I guess I -- I

1 made that determination, that there was a material
2 risk that there was -- that the funding agreement
3 was void or voidable and informed the board and
4 the board made that determination.

5 Q. When did you first -- when did it first
6 come into your mind that the funding agreement
7 might be void or voidable?

8 A. I think around -- it must have been
9 right around the time of the Third Circuit
10 decision.

11 Q. Okay. And did anyone else comment to
12 you that, oh, my gosh, the funding agreement might
13 be void or voidable or just something you --
14 you -- you came up with?

15 A. There were numerous discussions about
16 the enforceability of the funding agreement.

17 Q. Okay. Well, I want to drill down on
18 that.

19 The Third Circuit decision comes out and
20 it found that the filing was in bad faith and
21 needed to be dismissed, correct?

22 A. It found that the filing -- that the
23 bankruptcy needed to be dismissed, yes.

24 Q. And that was -- let me get my date
25 right. That was on or about January 30th,

1 2023?

2 A. Yes.

3 Q. Okay. So when -- following January
4 30th, 2023, and the Third Circuit decision,
5 approximately when was the first communication you
6 had with anybody about the possibility that the
7 funding agreement was void or voidable? Again,
8 I'm not asking for substance or legal
9 communications. I just want to know when the
10 first communication you had with anybody about the
11 possibility that it was void or voidable, when did
12 that happen?

13 A. I think that day.

14 Q. And had you -- and you had never thought
15 about it prior to that time?

16 A. Never.

17 Q. Never did any analysis of the funding
18 agreement?

19 A. No.

20 Q. What might happen if the bankruptcy's
21 dismissed?

22 A. Not in line -- not -- not in line with
23 what the Third Circuit had said.

24 Q. Hmm. Well, what was it about what the
25 Third Circuit said that made you believe that the

1 funding agreement was void or voidable?

2 A. There was a footnote that suggested that
3 it was ironic that funding -- the guarantee by
4 J & J which was done without -- that was not
5 required by J & J to do caused the bankruptcy to
6 be filed in bad faith. So that -- that guarantee
7 was specifically put in in order to enhance the
8 prospects of bankruptcy.

9 And so immediately when the Third
10 Circuit said that not -- not only did it not
11 enhance the bankruptcy but, in fact, it thwarted
12 it, we thought that that -- it was unfair, that it
13 made little sense in the scheme of things, but
14 that that would render the guarantee void or
15 voidable because of various legal rationales.

16 So that -- that's on the -- that's why
17 the Third Circuit decision triggered -- triggered
18 that issue.

19 Q. What -- what law firm advised LTL in
20 connection with the -- the negotiation of the
21 original funding agreement?

22 A. That was Jones Day.

23 Q. And has the board investigated or
24 requested other counsel to look at a malpractice
25 claim against Jones Day in connection with

1 take. That's all put into the board minutes, I
2 think.

3 MS. BROWN: And, Jeff, when
4 you get to a good spot, can we take a
5 break before you do a new subject?

6 MR. JONAS: Just give me a
7 couple?

8 MS. BROWN: Yep.

9 MR. JONAS: Thank you.

10 BY MR. JONAS:

11 Q. So when you -- when it first came to
12 your mind that the funding agreement must be void
13 or voidable, what -- what steps did you take in
14 that regard?

15 MS. BROWN: Without revealing
16 legal advice, Mr. Kim.

17 MR. JONAS: Yeah. Yeah.
18 Always the case.

19 A. I think there were numerous discussions
20 about the enforceability of -- of the funding
21 agreement. There are certain alternatives to
22 bankruptcy. You know, the -- the -- whether we
23 should be refiling for bankruptcy.

24 Q. Well, the funding agreement -- I just
25 want to check.

1 The fund -- the parties to the funding
2 agreement are LTL, right?

3 A. Yes.

4 Q. Johnson & Johnson Consumer, Inc., right?

5 A. Yes. You're talking about the old --

6 Q. Yeah, the old funding agreement.

7 And Johnson & Johnson, right?

8 A. Yes.

9 Q. So did you ever discuss with those
10 parties whether they thought the funding agreement
11 was void or voidable?

12 A. There were discussions among counsel for
13 those parties.

14 Q. Well, let me ask you. Your -- again,
15 was it Johnson & Johnson or JJCI -- JJCI's view
16 that the agreement was void or voidable?

17 MS. BROWN: I think that's
18 going to implicate legal advice and
19 would cause you to speculate as well,
20 so I object.

21 Can you answer that question
22 without divulging information of other
23 lawyers that you may also have a
24 privilege with under the common
25 interest?

1 thought it was more than fair and equitable but
2 that the \$2 billion was not the amount that --
3 that was just the beginning amount to put into a
4 QSF that could be augmented in the future.

5 Q. But I want to -- I want to -- thank you
6 for that answer. I just want to have you answer
7 my question.

8 In LTL 1, LTL, J & J, JJCI all -- as far
9 as you know, all took the position that \$2 billion
10 was a fair and equitable resolution of talc
11 claims, correct?

12 A. No, I -- that -- so the \$2 billion was
13 never set up to resolve -- as -- as the resolution
14 to the talc claims, which you -- I think the way
15 that you put it. So I would disagree with the way
16 that you've -- you've characterized that.

17 Q. Okay. Well, how did -- how did L --
18 well, just focus on LTL.

19 How -- under the second bankruptcy,
20 there's -- the proposal is an \$8.9 billion trust,
21 correct?

22 A. There is, yes.

[REDACTED]

[REDACTED]

[REDACTED]

A horizontal bar chart consisting of 20 black bars. The bars are arranged in a single column, with the longest bars at the top and bottom, and shorter bars in the middle. The chart is set against a white background with a vertical gray line on the left.

1 but is in financial distress --

2 A. Mm-hmm.

3 Q. -- what time period were you referring
4 to?

5 A. At all -- at all times.

6 Q. At all times.

7 A. Yes.

8 Q. Okay. So I'm referring to at all
9 times.

10 A. Okay.

11 Q. What is the basis of your saying that
12 LTL is not -- is not insolvent and -- but is in
13 financial distress?

14 A. Because it has sufficient funds to pay
15 off its -- its debts currently as they come due.
16 It is not -- I don't think it fits any measure of
17 what's insolvent. Financial distress is a little
18 tougher because I think, as the Third Circuit
19 pointed out, there's really no definition of
20 financial distress. But what I would say is that
21 at every point in time -- and I would include even
22 prior to our -- you know, we disagree with the
23 Third Circuit on -- on whether it was in financial
24 distress during LTL 1.

25 But I would say at all points in time

Government	Percentage
Current government	55%
Previous government	45%

16 Q. Okay. Okay. Okay. Let's move on.

17 MR. JONAS: Kim 19, please.

18 (Whereupon, exhibit is
19 received and marked Kim Deposition
20 Exhibit 15 for identification.)

21 THE REPORTER: Kim 15 for
22 identification.

23 THE WITNESS: Thank you.

24 BY MR. JONAS:

25 [REDACTED]

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1 Q. And -- and who was involved in those
2 discussions, the name of the people?

3 A. There -- there were numerous discussions
4 with -- with J & J and its counsel. I know
5 there's Jones Day --

6 THE WITNESS: Should I just
7 name the firms?

8 MS. BROWN: Yes.

9 A. You know, Jones Day was involved, White
10 & Case was involved, Erik Haas was involved, I was
11 involved, Andrew White was involved in
12 discussions.

13 Q. Okay. And -- and who -- strike that.

14 Which party do you claim wanted to
15 declare the 2021 funding agreement void or
16 voidable? Which parties?

17 MS. BROWN: You -- Mr. Kim,
18 I don't want you to reveal legal
19 advice or decision-making. If you
20 have a general understanding about
21 the conclusion of these discussions,
22 you can reveal that, but do not
23 identify specific people with specific
24 opinions if it's based on legal
25 advice.

1 A. I would say there was a consensus
2 that -- that there was a material risk that the --
3 that the funding agreement was void or voidable.

4 Q. Okay. So it's your position as the
5 chief legal officer of LTL that both LTL and J & J
6 jointly decided at some point before April 4th,
7 2023, that both parties wanted to declare the 2021
8 funding agreement void?

9 MS. BROWN: That misstates
10 his testimony. I object.

11 A. I wouldn't characterize it that way.

12 Q. All right. Which party wanted to
13 declare it void?

14 A. Again, I don't -- again, I don't think
15 that's the -- the right way to -- to look at it.
16 I would -- I would -- I would say that there was a
17 consensus reached that the -- that there was a
18 material risk that the funding agreement was --
19 was unenforceable because it was void or
20 voidable.

21 Q. And who were the parties to that
22 consensus?

23 A. Everyone that I named.

24 Q. The parties -- I'm not asking about law
25 firms. Who were the parties to that consensus?

1 MS. BROWN: You want him to
2 identify specific lawyers that would
3 sign on to --

4 MR. BLOCK: No.

5 Q. No, sir. LTL and J & J, are you saying
6 that those two parties reached a consensus that
7 the 2021 funding agreement was void?

8 A. I would say through their lawyers, yes.

9 Q. Sir, let me just share the screen and I
10 want to ask you about an exhibit that you were
11 shown earlier. I want to ask you something
12 different about it.

13 Exhibit 2 you were shown?

14 A. Yes.

15 Q. Okay. And this is a list of -- "Amended
16 list of law firms with significant talc claims
17 against the debtor" filed on April 13th, 2023.

18 Do you see that?

19 A. I do see that.

20 Q. Okay. And it says "The following is an
21 alphabetical list of the law firms with the most
22 significant representations of parties with talc
23 claims against LTL Management, LLC."

24 Do you see that?

25 A. I do see that.

1 Q. Okay. And one of the firms listed here
2 is Watts -- Watts Guerra, correct?

3	A. Correct.
---	-------------

4 Q. Okay. And so with -- with ref -- with
5 reference to Watts Guerra, using that as an
6 example, what is your basis for determining that
7 the Watts firm has what's referred to here as
8 "talco claims against LTL Management LLC"?

Category	Value
Category 1	9
Category 2	10
Category 3	8
Category 4	6
Category 5	10
Category 6	9
Category 7	7
Category 8	10
Category 9	9
Category 10	6
Category 11	10
Category 12	7
Category 13	8
Category 14	10
Category 15	9

A horizontal bar chart consisting of 20 rows of black bars. The bars are arranged in a single column, with the longest bars in the middle and the shortest at the top and bottom. The bars represent a distribution of data, with the longest bars in the middle and the shortest at the top and bottom.
